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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 88

GEORGE RAMSEY, LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS; TENNESSEE PRODUCTS AND CHEMICAL CORPORATION, *Petitioners*,

v.

UNITED MINE WORKERS OF AMERICA, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, AMICUS CURIAE

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No. 1179

GEORGE RAMSEY, LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS; TENNESSEE PRODUCTS AND CHEMICAL CORPORATION, *Petitioners,*

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BRIEF OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, AMICUS CURIAE

STATEMENT OF THE CASE

This brief, Amicus Curiae, is addressed to the Writ of Certiorari granted by this Honorable Court on

March 30, 1970, to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on September 26, 1969, and reported at 416 F.2d 655. A Petition for rehearing filed by Petitioners herein was denied by the Circuit Court on December 16, 1969. The United States Court of Appeals for the Sixth Circuit, by an equally divided vote, affirmed the judgment of the United States District Court for the Eastern District of Tennessee in favor of Respondent herein. The Opinion of the District Court was entered on March 4, 1967, and is reported at 265 F. Supp. 388.

Neither the Bituminous Coal Operators' Association nor any of its member companies was a party to the instant case, which involves a claim by certain coal operators in southeastern Tennessee against the United Mine Workers of America (hereinafter sometimes referred to as the "Union") based upon a charge that the Union entered into a conspiracy in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C., Sections 1, 2). However, several member companies of the Association were named in the suit as alleged co-conspirators.

THE INTEREST OF THE AMICUS CURIAE

Bituminous Coal Operators' Association's (hereinafter referred to as "BCOA") primary interest in this case is in the preservation of the legality and integrity of the National Bituminous Coal Wage Agreement and the procedures established and utilized by BCOA in order to comply effectively with its congressionally mandated duty to bargain and enter into collective bargaining agreements, on behalf of its members, with the United Mine Workers of America, the duly certified bargaining representative for the em-

ployees of BCOA members. BCOA is also vitally interested in any consideration by this Honorable Court of the so-called "effects and consequences" of collective bargaining on which Petitioners herein rely in order to establish their claim of a conspiracy between the Union and BCOA in violation of the federal antitrust laws.

BCOA is especially interested in the proposition that bona fide labor agreements—arrived at pursuant to the Congressionally-mandated duty of employers to bargain collectively with labor organizations—should not be used as the launching pads for claims and/or adjudications of antitrust conspiracies. As indicated in the recent decision of this Honorable Court in *The Boys Markets, Inc.* v. *Retail Clerks' Union, Local 770,* No. 768 October Term, 1969, decided June 1, 1970 (38 L.W. 4462), the Federal labor laws contemplate and emphasize the achievement of industrial peace through collective bargaining. Efforts to attack labor organizations on the basis of collective bargaining contracts with employers or associations of employers also affect such employers or associations who are complying with Federal laws.

BCOA does not have any interest in other aspects of this case considered by both the District Court and the Circuit Court, such as, for example, evidence of Union attempts to organize the southeastern Tennessee coal fields, the purchase of stock in the West Kentucky Coal Company by the Union, and the subsequent alleged "price cutting" activities of West Kentucky Coal Company on the TVA Market. Since BCOA is in no way involved in these issues, no comment will be made herein with respect to these issues.

ARGUMENT

THE NORMAL CONSEQUENCES OF THE SYSTEM OF COLLECTIVE BARGAINING WHICH IS ENDORSED AND ENCOURAGED BY THE NATIONAL LABOR RELATIONS ACT SHOULD NOT BE USED TO CHALLENGE THE LEGALITY AND INTEGRITY OF THE CONGRESSIONALLY MANDATED COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE UNION AND BCOA

Preliminary Statement

On page 10 of the Petition for Writ of Certiorari heretofore filed in this Honorable Court, Petitioners state that a central part of their contentions is that the Union repeatedly negotiated amendments to the National Bituminous Coal Wage Agreement with BCOA, an organization that is described by Petitioners as a ". . . bargaining association that represented major companies in the northern coalfields". Petitioners then further contend that these contracts negotiated between the Union and BCOA ". . . were then applied by the Union to all other bargaining units with disastrous results to all companies in the Tennessee fields, and repressive effects to competition in most of the industry elsewhere."

Initially, BCOA believes it essential to dispel any implication raised by Petitioners (and also alluded to in the Dissenting Opinion of the Circuit Court in this case) that BCOA only represents so-called major or larger coal operators. The history of BCOA and its role in collective bargaining on behalf of all of its member companies will be discussed in Part I of this Brief.

BCOA also believes it essential to discuss and evaluate, from the standpoint of management, the normal

effects and consequences of collective bargaining in an industry, such as the coal industry, and the reasons why such normal effects and consequences cannot and should not be used to infer the existence of a conspiracy between the parties to such a collective bargaining relationship. These matters will be discussed in Part II of this Brief.

BCOA does not intend to discuss herein the language of the National Bituminous Coal Wage Agreement or the various amendments thereto. The written Agreement has been held to be valid by both the District Court and the Circuit Court in the instant case, and has also been held to be valid by both the District Court [257 F. Supp. 815 (E.D. Tenn. 1966)] and the United States Court of Appeals in the case of *Lewis* v. *Pennington,* 400 F.2d 806 (6th Cir. 1968), *cert. denied,* 393 U.S. 983 (1968). In the instant case, the District Court concluded (265 F. Supp. at 412) that paragraph A of the Protective Wage Clause in the 1958 Amendment to the National Bituminous Coal Wage Agreement does not constitute an express commitment on the part of the Union to BCOA not to bargain with any other coal operator upon any terms other than the national contract. BCOA subscribes to this interpretation of the Protective Wage Clause, and also to the Circuit Court's conclusion in the instant case, and also in the *Pennington* case, *supra,* that the collective bargaining agreement does not constitute a violation of the federal antitrust laws.

I.

BCOA AND ITS ROLE IN COLLECTIVE BARGAINING ON BEHALF OF ITS MEMBER COMPANIES

BCOA was formed in 1950 as an unincorporated association. Its objects, insofar as they are pertinent to this case, are stated in its "Agreement and Articles of Association" to be:

> "to promote stable, just and harmonious industrial relations between its members and their employees; to negotiate, from time to time, basic agreements for its members covering wages, hours, and conditions of employment and to enter into such agreements on behalf of such members with the representatives of the International Union of United Mine Workers of America . . .; to aid in the enforcement of such agreements at top levels between the members of the Association and their employees; to secure the faithful observance by its members of all such agreements . . .".

The method of negotiating a contract or changes in a contract with the Union is not rigidly prescribed in the Agreement and Articles of Association of BCOA. The reason for this is to promote a flexibility of approach to each new effort at negotiations. Since each negotiation has different characteristics, many of the procedures utilized, such as the appointment of study committees and the like, are ad hoc and vary each time negotiations are entered into.

Article II of the "Agreement and Articles of Association" of BCOA states that the Association shall "enter into such Agreements on behalf of such members" with the Union. The Agreements referred to are collective bargaining agreements with the Union and the members referred to are members of BCOA. Any member of BCOA which is not in agreement with the contract

may refuse to authorize execution on its behalf. BCOA mails the contract or Amendment to its members with an explanatory covering letter. Even after such bargaining is completed, individual members may refuse to authorize the contract's execution on their behalf.

On page 10 of the Petition for Writ of Certiorari, Petitioners refer to BCOA as "a bargaining association that represented major companies in the northern coalfields." This same erroneous inference can also be found in the Dissenting Opinion of the Circuit Court in the instant case, wherein reference is made to the Petitioners' contention of a conspiracy between ". . . a few big coal companies, who formed the Bituminous Coal Operators Association, and the United Mine Workers". 416 F.2d at 668. It is true of course that membership in BCOA has included some of the larger coal operators in the industry. It also includes directly or through associate membership in local associations a significant number of smaller operators. Far from being restricted to northern coalfields, midwestern and southern fields are also represented. In this regard, the following statement by the District Court is believed significant:

> "At one time a total of 262 individual coal companies were included within its [BCOA] membership. These included the largest in the industry. They also included the smaller, for approximately one-half of the member producers produced less than 100,000 tons of coal a year. Those who stayed out [of BCOA] did so by choice and not by reason of any exclusionary rule." 265 F. Supp. at 407

Reference is also made in the Dissenting Opinion of the Circuit Court in the instant case to the fact that West Kentucky Coal Company is one of the "biggest"

members of BCOA. This is simply not true. West Kentucky Coal Company is not presently and has never been a member of BCOA.

Thus, it is erroneous and misleading to contend that BCOA is an Association organized and controlled by a few companies.

II.

EFFECTS AND CONSEQUENCES OF COLLECTIVE BARGAINING IN THE BITUMINOUS COAL INDUSTRY

Among the matters relating to the collective bargaining agreements and the bargaining mechanisms used to negotiate such agreements which were stressed by Petitioners in the instant case were the following:

1. General labor peace in the industry since 1950 as compared to the incessant conflict, strikes and labor unrest prior thereto;

2. Increase in wage levels and welfare benefits as a result of collective bargaining since 1950;

3. Failure of the Union to effectively oppose mechanization, which increased employee productivity in the mines and decreased employment in the mines.

These matters are all of direct concern to BCOA and its members because they are generally the product of collective bargaining and relate to the collective bargaining agreement which BCOA negotiates with the Union. They are also clearly on their face the normal consequences of the system of collective bargaining which is endorsed and encouraged by the National Labor Relations Act. It cannot be doubted that the Union and BCOA had a Congressionally mandated duty under the national labor laws to bargain collectively and to attempt to reach agreement on such matters as wages, hours and general working conditions. There

is therefore an employer's exemption from the anti-trust laws correlative with that afforded to labor unions. It would be anomalous and impossible for the labor union to be exempt in its relationship to employers and the employers not to be covered by the same protection. (Compare: *Kaplan* v. *Lehman Brothers,* 250 F.Supp. 562 (N.D. Ill. 1966), *aff'd,* 371 F.2d 409 (7th Cir. 1967), *cert. denied,* 389 U.S. 954 (1967), *rehearing denied,* 390 U.S. 912 (1968)).

Accordingly, the consideration to which matters such as those stressed by Petitioners is given by this Honorable Court in the evaluation of a conspiracy charge in an employer-union collective bargaining relationship could affect not only BCOA and the coal industry, but all industries in which collective bargaining is handled through the process of multi-employer bargaining associations.

(1) Bargaining Chaos in the Coal Industry Prior to the Formation of BCOA

A brief review of bargaining in the coal industry prior to 1950, as discussed in the District Court's Opinion (265 F. Supp. at 404-407), should cause sober reflection to those who would indict the procedures established and utilized by BCOA in the fifties to satisfy its congressionally mandated duty of collective bargaining without incessant conflicts, strikes and general labor unrest.

It is a matter of history that from 1930 to 1950 bargaining in the coal industry was highlighted by bitter and protracted "Klieg light" negotiations between large numbers of the Union's committee and even larger numbers of employers. Costly strikes impairing the national interest were a recurring symptom, and government seizure of the mines became an ordinary,

not extraordinary remedy. NLRB charges and counter-charges were frequently exchanged and lawsuits resulting from bargaining differences were on court dockets continuously. The only way to describe such bargaining in the 30's and 40's is to say that it was chaotic and costly to the industry and the public at large. This period of history was characterized by national strikes, injunctions, Government seizures, and almost total disruption.

During these years the bargaining for a contract generally became focused on a similar date for most of the operators. Four distinct employer groups emerged in these national negotiations—the Northern operators, the Southern operators, the Mid-West operators and the so-called "captive mine" operators (operators who mine coal for use in the processing of another product, mainly steel). These broad lines of division between the employer groups made for disorganized bargaining on the employer side, and provided opportunity for the Union to exploit the organizational weakness of the employers. With each new effort at negotiations the operators would attempt to form a committee with various subcommittees to receive and present bargaining proposals. There was, however, no continuing organization to attempt to maintain peaceful and stable labor relations. The amorphous and ad hoc nature of the employers' bargaining organization made serious, good faith and business-like bargaining difficult, if not impossible, on both sides of the bargaining table.

Given the organizational disarray of the employers and the increasing strength of the Union through the National Recovery Act with its Coal Code in 1933, the Guffey Act in 1935, and the Bituminous Coal Act of 1937, and the second Guffey Act of 1939, the results

were not surprising. In 1934, 400,000 miners struck for one week after which the operators agreed to a wage rate of $5.50 a day in the North and $5.10 in the South. In 1939, the Union demanded a wage increase, a 30 hour week, paid vacations, seniority rights, improved hospitalization, federal inspection of mines and a protective clause. Negotiations broke down. The miners struck for five weeks and returned only after Presidential intervention. In 1941, the Southern miners struck Southern operators after these operators withdrew from negotiations in which the Union was seeking to eliminate the regional wage differential. Shortly thereafter miners of the captive mines struck. One hundred thousand other miners struck in sympathy with the strike of the captive mine employees. During the 1943 negotiations there were a number of strikes over a six month period and the government seized the mines twice. Similarly in 1945 a number of strikes following a breakdown of negotiations resulted in government seizure of 235 mines.

When the government seized the mines once again in 1946 because of a breakdown in negotiations over a welfare fund, a settlement was reached only by means of negotiating a collective bargaining agreement between the United Mine Workers and the Secretary of the Interior, who agreed to the welfare fund. From 1947 through 1950, contracts were negotiated between the United Mine Workers and segments of the industry, and attended by substantial strikes.

The succeeding contracts in 1951, 1952, 1955, 1956, 1958 and 1964 have been in the form of amendments to the 1950 agreement, which is the basic agreement and was negotiated before the existence of BCOA. BCOA has participated in the making of these amend-

ments by negotiating with the Union on behalf of its own members, in the manner described above. BCOA's contribution has been to provide a continuing focal point for its operator members to attempt to achieve peaceful and amicable settlements with the Union and to avoid crippling strikes. BCOA performs this function on behalf of its members.

The results of the post-1950 method of negotiations are an open record. Collective bargaining has been, to a degree, stabilized in the industry. There have been no government seizures, although substantial strikes have occurred, and wildcat walkouts continue to plague the industry. Collective bargaining problems have not ended in Government seizure and have resulted less frequently in NLRB or court proceedings.

The record will show that the negotiations since 1950 have not been without real issues between the parties. Each new Union demand has been carefully analyzed for its legality and its economic impact on the members of BCOA. Many demands have been opposed and few have been accepted without compromises on both sides. The issues are still the same; only the procedures by which the issues are resolved have been improved.

The thrust of Petitioners' argument with respect to the post-1950 negotiation of the National Bituminous Coal Wage Agreement appears to be that there is something sinister and unlawful in the fact that a group of coal operators have chosen to eschew individual company bargaining and conduct their contract negotiations with the Union through BCOA, an employer association established for that express purpose. Petitioners also seek to draw unfavorable inferences from the further fact that the post-1950 bargaining for amendments to the agreement has been characterized

to a greater degree by peaceful settlements and by the considerable reduction in the number of strikes, public bickering and legal controversies of the type which were prevalent in the pre-1950 era.

Petitioners do not enlighten us as to how the coal operators should conduct these contract negotiations in such a way as to lift this cloud of suspicion from the contract negotiations. Presumably, however, this could require the abandonment by coal operators of association-type bargaining and force a reversion to the disorganized and dismally unsuccessful pattern of the past, where the weaknesses inherent in the lack of maturity and organization on the operator side were exposed and exploited by a strong and unified labor union.

Nor do Petitioners enlighten us as to how the coal operators, acting through their associations or otherwise, can roll back or unduly retard wage and welfare advances in this industry without regard to the aspirations of the miners for improvement and the general upward movement of wages and welfare in the economy at large.

An essential element of Petitioners' case appears to be an attack on any form of Association or pattern bargaining. The right of individual employer units in the same industry to form an association to represent their common interests in collective bargaining has been sustained by the NLRB and the courts. *NLRB* v. *Truck Drivers' Local Union,* 353 U.S. 87 (1957); *Alston Coal Co.,* 4 L.R.R.M. 337, 13 NLRB 683 (1939), *Stevens Coal Co.,* 19 NLRB 98 (1940). The legality of association bargaining is therefore beyond question. The regulation of collective bargaining between employers and unions and the enforcement of the rule

of good faith, arm's-length negotiating fall within the exclusive province of the NLRB. The NLRB has not prescribed that any particular formalities be followed in reopening and negotiating changes in collective bargaining agreements, nor has the Board ever drawn any inferences of collusion or bad faith bargaining from the fact that the parties are able to resolve their disputes at the conference table rather than by resort to strikes or lockouts to gain their ends. On the contrary, the national labor policy encourages and fosters the establishment of orderly bargaining procedures for the peaceful settlement of contract disputes, a policy that has found some success in the coal industry since 1950.

It is inconceivable that bargaining procedures, which have the complete endorsement of and are completely consistent with our national labor laws and policies, should in any respect be questioned under the antitrust statutes. To conclude inferentially a Sherman Act conspiracy from the relative peace which occurred in the coal industry after 1950 is to equate stability to a Sherman Act conspiracy and instability to Sherman Act policy compliance.

In this regard, the District Court, after reviewing in detail the history of collective bargaining in the coal industry both prior to and subsequent to 1950, held that:

> "[a] contrasting peaceful and orderly pattern of collective bargaining following a prior pattern of industrial warfare and strife does not become suspect nor serve as an evidentiary predicate for a Sherman Act conspiracy charge." 265 F. Supp. at 408.

BCOA earnestly suggests the complete and unqualified adoption of the District Court's ruling in this regard.

(2) Increase in Wage Levels and Welfare Payments as a Result of Collective Bargaining Since 1950

Increased wages and benefits and better working conditions are primary and traditional goals of all labor unions, and their right to pursue these goals through collective bargaining is fully recognized and implemented by law. The United Mine Workers of America is by no means unique in its devotion to these objectives or in its success in attaining them since 1950, just as they pursued and attained with equal success substantial wage and other concessions in the decade preceding 1950.

The wage increases and fringe benefits granted in the bituminous coal industry as a result of collective bargaining since 1950 have been no greater than wages and fringes granted in other basic industries during the same period. This fact is borne out by the statistical information reproduced in the District Court's Opinion (265 F. Supp. at 408) comparing the average weekly and hourly earnings of bituminous coal mines with that of two other basic industries (motor vehicles and steel) in 1950 and 1964. With reference to the United Mine Workers Welfare and Retirement Fund, it is believed significant to point out the fact that the fund was first established in 1946, during a period of government seizure and operation of the coal mines. The welfare fund royalty had been established at 5 cents per ton in 1946, raised to 10 cents in 1947, to 20 cents in 1948 and to 30 cents in the 1950 contract. Since 1950, the welfare fund royalty has been increased once to forty cents per ton.

Here again, however, the increase in wage rates and welfare royalty payments achieved by the Union since 1950 are introduced into evidence by Petitioners as an-

other circumstance with which they hope to persuade the fact finder to infer the existence of a conspiracy between BCOA and the Union. In this regard, it is submitted that no inference of an unlawful conspiracy can be drawn from the normal results which have occurred from the arm's-length collective bargaining which has taken place under compulsion of law, such as increases in wage rates and employee benefits for members of the Union over the years. These are the normal and expected consequences of our system of free collective bargaining.

The assumed fact, even if it were shown to exist, that there are marginal coal operators in the industry who cannot afford to pay the wages and benefits to their employees demanded by the Union provides no proper basis for an antitrust violation. This is an unfortunate economic condition and a fact of life which exists in all industries, and in some perhaps to a greater extent than others. Unions, in presenting and pursuing their bargaining goals in a particular industry, are not required to, and normally do not, take into account the ability to pay of financially weaker business units, but traditionally center their aims on the larger and more stable enterprises in the industry. By the same token, the more stable employers have had little success in resisting union wage and other economic demands on the grounds that less stable employer units cannot afford to meet union standards. This Honorable Court, in the case of *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), expressly recognized that:

> "Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it even though it may suspect that some employers cannot effectively compete if they are re-

quired to pay the wage scale demanded by the union. The union need not gear its wage demands to wages which the weakest units in the industry can afford to pay. Such union conduct is not alone sufficient evidence to maintain a union-employer conspiracy charge under the Sherman Act." (Footnote 2, Opinion of Mr. Justice White), 381 U.S. at 665.

The District Court in the instant case expressly recognized the fact that ". . . national uniformity in wage rates and labor standards in the coal industry has been a consistent policy and goal of the UMW since its inception in 1890", more than a half century prior to the formation of BCOA. 265 F. Supp. at 404. There is simply no evidence whatsoever in the record in this case to infer that BCOA had any control whatsoever over the establishment and/or the implementation by the Union of its long-standing policy of national uniformity in wage rates and labor standards.

(3) Failure of the Union To Effectively Oppose Mechanization, Which Has Increased Employee Productivity in the Mines and Decreased Employment in the Mines

In the third question submitted to this Honorable Court in the Petition for Certiorari heretofore filed by Petitioners, it is suggested that an antitrust violation can be inferred in the instant case because flat increases of rates for all jobs in the same amount has allegedly caused or forced all companies in the coal industry to mechanize in order to survive, and has also resulted in two-thirds of the men losing their jobs. In this regard, Petitioners make certain assumptions which are not valid. To begin with, it is assumed that mechanization in the coal industry began only in 1950, at or about the time that the alleged conspiracy is

claimed to have begun. However, it is submitted that mechanization programs in the coal industry started long before 1950 and they are continuing and will continue in the future under the compulsion of economic necessity. It is also assumed that the Union, allegedly acting in concert with BCOA, began to encourage mechanization only after 1950. To the contrary, the Union had encouraged mechanization in the bituminous coal industry for many decades prior to 1950.

It is also true, however, that increased mechanization in the coal industry after 1950 was not solely the result of the increased wage rates negotiated by the Union after that time. There is no question that the coal operators have attempted, with some success, to mechanize their mines and to increase the productivity of the individual miner. In their efforts to mechanize, the coal operators were motivated by normal, prudent business considerations of controlling costs and enhancing their ability, at best precarious, to compete with other fuels. In this regard, the District Court stated as follows:

> "As significant as wage scales undoubtedly have been in inducing mechanization in the bituminous coal industry, at least equally conducive to such mechanization has been the competition that coal has undergone from other fuels, such as gas and oil in the period since 1940. Since World War II a veritable revolution has occurred in the fuel and energy market." 265 F. Supp. at 409.

The District Court then proceeded to review a series of charts showing the effect of this revolution upon the coal industry. It is believed significant to note that after examining and discussing the aforesaid statistical

information, the District Court validly and properly came to the following conclusion:

> "It is apparent, at least in viewing the national picture, that coal was forced to mechanize to survive." 265 F. Supp. at 409.

The District Court also made the following pertinent observations with respect to the so-called "effects and consequences" of collective bargaining relied upon by Petitioners in this case:

> "Undoubtedly, the combination of the economic forces discussed above have borne heavily upon the marginal coal producer who has been unable to remain competitive in the face of rising costs, declining prices and heavy capital expenditures required for mechanization, as these pressures have likewise borne heavily upon the miner who found himself unemployed as a result thereof. But the economic pressures created by technological advances and the competition engendered thereby do not equate to a Sherman Act violation. Upon the contrary, the Sherman Act is designed to keep the market open so that such competitive pressures may operate." 265 F. Supp. at 409.

CONCLUSION

BCOA has, in effect, accomplished the primary purpose for which it was organized in 1950. BCOA has attempted with some success to become a mechanism through which its member-employers could fulfill their congressionally mandated duty to bargain collectively and reach agreements with the United Mine Workers of America, minimizing to some extent the incessant conflicts, strikes and general labor unrest which occurred in the decade prior to 1950. Recent unrest in the coal industry shows the necessity for continuing

efforts along these lines. The comparative labor peace in the coal industry which has come about since 1950 is indeed the ultimate objective of our national labor policy and is to be applauded, rather than being looked upon with suspicion as a UMW-BCOA conspiracy in violation of the antitrust laws. Any possible inclination to infer the existence of an anticompetitive conspiracy from the relative peace which has occurred since 1950 or from the normal and expected consequences of collective bargaining should be resisted with respect to the coal industry. This is true because, in coal industry, the Union representing the employees has, since the Union's inception in 1890, established and pursued vigorously a policy of obtaining national uniformity in wage rates throughout the industry.

BCOA, therefore, urges this Honorable Court to vindicate the integrity of the collective bargaining agreement and the methods used to negotiate the same by affirming the judgment of the United States Court of Appeals for the Sixth Circuit in the instant case.

Respectfully submitted,

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